the court): We dismissed this appeal on January 15, 1985 with costs and here are our reasons for doing so.

In 1976 a Company, Pembangunan Farlim Sdn. Bhd. (PFSB) was developing a housing estate in Raub, known as Taman Raub Utama. For this purpose PFSB obtained a loan of $2 million from the Respondent bank (the bank). The appellants who were directors of PFSB executed a guarantee for the loan and as further security PFSB's land, *i.e.* 223 lots altogether upon which the housing estate was to be developed was all charged to the Bank. Consequently, the loan was released to PFSB on April 7, 1976. The project failed and the houses which were already built are neglected and partially covered with lalang and dense shrubs. None of these houses are completed and occupied. All the 223 lots, except 78 of them, are partially built and have buildings thereon and these lots were sold to members of the public. As to the 78 lots, there are no buildings erected on them. They are still vacant land, but there is no evidence that they were not sold. According to the valuer the value of these properties is about 6.7 million.

PFSB is unable to pay the debt, and despite demands made the loan remains unpaid. As a result on May 31, 1982 the Bank took out a writ against PFSB claiming a total sum of $3,335,832.42 by way of principal and interest. Subsequently, the respondent took proceedings against the appellants on the guarantee. The appellants made an application to the court below to stay the proceedings against them until after the Bank had foreclosed the charges and realised their securities against PFSB. The application was refused and the matter came before us.

We accept that a guarantor has an equity against the creditor if he can show that the creditor is attempting to unfairly place the whole burden of the debt upon him. (*Rowlatt* on the Law of Principal and Security, 14th Ed. (1982) p.132). But the facts in the present appeal do not give rise to such equity. PFSB is unable to pay the loan and despite demands, the loan was unpaid. The lands which were charged as a security for the loan were also sold to several purchasers. Surely, these purchasers too have equities. (*Kheng Soon Finance Bhd.* v. *M.K. Retnam Holdings Sdn. Bhd. & Ors.*[1]). Thus, in this appeal we have four parties: (1) The Bank which lent the money and is entitled to be repaid; (2) PFSB, the borrower who had made use of the money and is unable to repay the loan; (3) the appellants who run PFSB and upon whose guarantee the money was lent, and (4) the members of the public who had innocently purchased and paid for the houses which would be constructed on the housing estate. Between the equities of the appellants and the purchasers, surely the court should protect those of the purchasers, because theirs are the innocent ones. In fact counsel for the appellants conceded this point.

Thus, in the circumstances of this case the guarantors have no equity to prevent the Bank from proceeding upon the guarantee to recover the amount owing to them.

The appeal is therefore dismissed with costs. The deposit is to be paid to the Respondent bank on account of taxed costs.

Appeal dismissed.

Solicitors: *Kassim Tadin, Wai & Co.; Joginder Singh & Co.*

PUBLIC PROSECUTOR v. MOHAMED NOR & ORS.

[S.C. (Abdul Hamid C.J. (Malaya), Wan Suleiman & Hashim Yeop A. Sani S.C. JJ.) March 19, 1985]

[Kota Bharu – Supreme Court Criminal Appeals Nos. 11 – 14 of 1984]

Criminal Law and Procedure – Appeal – Sentence – Acting in manner likely to prejudice the maintenance of unity on grounds of religion between persons professing the Islamic Religion – Binding over – Whether appeal court should interfere with sentence – Criminal Procedure Code (F.M.S. Cap. 6), s. 294 – Penal Code (Cap. 45), s. 298A.

Penal Code, s. 298A – Acting in manner likely to prejudice maintenance of unity on grounds of religion between persons professing Islamic Religion – Whether technical offence – Binding over – Whether appellate court should interfere with sentence.

In this case the first and fourth respondents were charged for acting in a manner likely to prejudice the maintenance of unity on grounds of religion between persons professing the Islamic Religion by acting as Bilal during the performance of Friday prayers, an offence under section 298A of the Penal Code. The second respondent was charged under the same section but as Imam and the third respondent as Khatib. The learned trial judge bound them over a period of three years to keep the peace and be of good behaviour under section 294 of the Criminal Procedure Code. The

Public Prosecutor appealed on the ground that the learned judge had failed to impose a deterrent sentence.

Held: (1) the acts committed by the respondents were likely to have far reaching effects and would not only prejudice the maintenance of public order but also affect the security of the whole nation. The offences were therefore not technical offences;

(2) it is an established principle that an appellate court should be slow to interfere or disturb with a sentence passed by the court below unless it is manifestly wrong in the sense of being illegal or being unsuitable to the proved facts and circumstances;

(3) in this particular case the court did not feel disposed to interfere with the sentence imposed by the learned judge but wish it to be known that there is no reason why the commission of other offences of this nature should not attract a more severe sentence, including custodial sentence, in appropriate cases.

SUPREME COURT.

Mohtar Abdullah (Deputy Public Prosecutor) for the appellants.

Che Man bin Che Mud for the respondents.

Cur. Adv. Vult.

Abdul Hamid C.J. (Malaya) (delivering the Judgment of the court): This is an appeal by the Public Prosecutor against sentence. The four respondents were convicted in the High Court at Kuala Trengganu on February 21, 1984. The first and fourth respondents were charged with the following charge:

"That you on June 10, 1983 at about between 1.20 p.m. and 1.55 p.m. at an unnumbered building, Kampung Kerandang, Besut, in the District of Besut, in the State of Trengganu, not being a person appointed under the Administration of Islamic Law Enactment (Trengganu No. 4 of 1955) as a Bilal, acted in a manner likely to prejudice the maintenance of unity on grounds of religion between persons professing the Islamic Religion in Kampung Kerandang by acting as a Bilal during the performance of Friday Prayers in the said building, and that you thereby committed an offence under sub-section 1 of section 298A punishable under sub-section 2 of the said section of the Penal Code."

The second respondent was charged under the same section but as an Imam and the third respondent as a Khatib.

The learned Judge bound them over for a period of 3 years to keep the peace and be of good behaviour in one surety in the sum of $1,000 and to appear and receive judgment if and when called upon to do so under section 294 of the Criminal Procedure Code.

Against this decision the Public Prosecutor now appeals on the ground that the learned Judge had failed to impose deterrent sentence. As there were two main grounds and for convenience we set them out hereunder:

"The Learned Judge, after having properly observed that the new section 298A of the Penal Code has been enacted by Parliament "to preserve law and order by maintaining a state of harmony, unity and goodwill between persons or groups of persons professing the same or different religions by preventing such persons from causing or attempting to cause disharmony, disunity or feelings of enmity, hatred or ill-will or from prejudicing the maintenance of harmony or unity" erred in law

(a) in allowing the personal considerations of the Respondents to far outweigh the paramount consideration of public interest as a whole and the interest of the Muslim Community in particular.

(b) in failing to consider the national interest and the will of Parliament in imposing the non-deterrent sentence of mere binding over on the Respondents."

Section 298A of the Penal Code is a new provision, the relevant part of which reads:

"298A. (1) Whoever by words, either spoken or written, or by signs, or by visible representations, or by any act, activity or conduct, or by organising, promoting or arranging, or assisting in organising, promoting or arranging, any activity, or otherwise in any other manner –

(a) causes, or attempts to cause, or is likely to cause disharmony, disunity, or feelings of enmity, hatred or ill-will; or

(b) prejudices, or attempts to prejudice, or is likely to prejudice, the maintenance of harmony or unity,

on grounds of religion, between persons or groups of persons professing the same or different religions, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

We refer to the section specifically to show the object and purpose of the legislation which we consider relevant to the determination of a proper sentence.

In the light of the object of the legislation it is necessary for the trial court to have regard to it before a sentence is imposed.

In the instant case the learned Judge recognised that this section is designed to preserve law and order to maintain a state of harmony, unity and goodwill between persons or groups of persons professing the same or different religions that are being practiced in this country by preventing such persons from causing or attempting to cause disharmony or disunity or feelings of enmity, hatred

or ill-will, and that the offences of the nature committed by the four respondents will have the effect of jeopardising Islamic unity, in the result, prejudicing the maintenance of unity and harmony in the country. The learned Judge proceeded to bind them over to keep peace and good behaviour under section 294 of the Criminal Procedure Code.

The learned Judge has considered the antecedents, age, health and mental condition of the respondents and exercised his discretion under section 294 of the Criminal Procedure Code to bind them over.

Without having to analyse minutely the grounds given by the learned Judge for binding over the respondents it is our view that although he stated the principle in the assessment of appropriate sentence correctly, he did not seem to fully appreciate the fact that acts or activities of the nature committed by the respondents were likely to have far-reaching effect and indeed would not only prejudice the maintenance of public order but also affect the security of the whole nation. We cannot therefore agree with the learned Judge that this is a mere technical offence. The learned Judge also observed that the offences committed by the respondents did not involve violence. In our view an act or activities need not involve violence to produce very serious consequences especially where such act or activities are likely to lead to lawlessness and public disorder.

The question now remains whether we should disturb the sentence in the instant case.

In this regard we would observe that it is the established principle that an appellate court should be slow to interfere or disturb with a sentence passed by the court below unless it is manifestly wrong in the sense of being illegal or of being unsuitable to the proved facts and circumstances. And the mere fact that another court might pass a different sentence provides no reason for the appellate court to interfere if the court below applies the correct principles in the assessment of the sentence.

For reasons we have stated above it is our view that although a more severe sentence would have been appropriate, we do not feel disposed to interfere with the sentence imposed by the learned Judge in this particular case. However, as we stated earlier, this is not a mere technical offence and for this reason we wish it to be known that we fail to see any reason why the commission of other offences of this nature should not attract a more severe sentence including custodial sentence, in appropriate cases.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Ghani Mohd. & Che Man & Co.*

ASIA MOTOR CO.(K.L.) SDN. BHD. v. RAM RAJ & ANOR.

[S.C. (Salleh Abas L.P., Wan Suleiman & Syed Agil Barakbah S.C. JJ.) January 9 & March 30, 1985]

[Kuala Lumpur – Federal Court Civil Appeal No. 31 of 1984]

Labour Law – Statutory minimum remuneration – Complaint that sales representatives paid less – Whether complaint can be heard by Director of Labour – Whether remuneration includes allowances, commission and bonus – Wages Regulations (Shop Assistant) Order, 1970, para. 4(i) – Employment Act 1955, s. 69 – Wages Council Act, 1947, s.15(1)

Employment – Statutory minimum remuneration – Complaint – Whether can be heard by Director of Labour – Meaning of "remuneration" – Employment Act 1955, s.69.

In this case the respondents who were sales representatives employed by the appellant claimed that they were paid less than the statutory minimum remuneration under paragraph 4(1) of the Wages Regulations (Shop Assistant) Order, 1970. They made a complaint to the Director of Labour, as a result of which the Director of Labour held an inquiry, at the end of which he made an order allowing the claims of the respondents for a total sum of $2440/–, that is $1400 to the 1st respondent and $1040/– to the second respondent. The order was upheld in the High Court. Leave was granted to appeal to the Supreme Court.

Held: (1) Order 4(i) of the Wages Regulations (Shop Assistant) Order, 1970 is not *ultra vires* section 15(1) of the Wages Council Act. It is completely in accord with the section and therefore the $250/– fixed as the statutory minimum remuneration is not *ultra vires;*

(2) the word "remuneration" in the Wages Council Act, means wages or basic wages and does not include other items such as special relief allowance, additional special relief allowance, commission or bonus;

(3) the Director of Labour has jurisdiction to entertain the respondent's claim as the dispute was a dispute between an employer and employee, it is dispute to pay wages and the dispute arose out of a term in the contract of service;

(4) the Director of Labour has jurisdiction to act under section 69(1) of the Employment Act to deal with a complaint regarding the statutory minimum remuneration under the Wages Council Act.